BOARD OF ADJUSTMENT MEETING MINUTES
City Council Chambers
501 4th Street
July 1, 2024 at 5:30 PM

Meeting called to order by Clark at 5:30 PM

IN ATTENDANCE WERE:
Present: Clark, Johnson, Lamb , Jensen, McCrory
Absent: None

Others present:
Aaron Johnson, Building Inspector
Sarah Kleber, City Attorney
Danny Christoffers, Secretary
Ben and Dulsey Perkins, Applicants

Public Hearing
The public hearing is being held to consider a variance request for 200 Prairie Lane. The request is for a variance from Zoning Code 165D.04(F)(3) which states: "On corner lots, a fence built in accordance with the required fifteen-foot setback of the street side yard (See Chapter 165B Zoned District Requirements) may have a maximum height of six feet unless other requirements are stated."
The applicant is requesting to have a 6-foot fence built within the required 15-foot setback for a corner lot. The location requested for the fence in the rear yard is less than the required 15-foot setback to continue the fence line matching up with the neighbor's fence in the abutting rear yard.

A motion was made by McCrory, seconded by Johnson to open the public hearing at 5:30 pm.
All ayes, motion carried.

Ben Perkins, 200 Prairie Lane, explained that they have a situation in the back yard between the pool and the patio where the only usable part of the yard is dissected as a result of the fence. He understands the policy because of corner visibility concerns. On Sgt Square Drive many houses are a corner lot because every block is subdivided. The intent of the rule doesn't apply because the fence location he is requesting is for the back end of the house which is over half the lot. The fence location would connect their fence with the neighbors fence. He walked the block and reported that everyone else has already moved their fence to this location. The fence placed within the setback would allow them more space to do things in the rear yard.

Garry Clark asked if the current fence is deteriorating?
Ben reported it is deteriorating, and they will build a new resin fence if it's not cost prohibitive.

Jenni McCrory asked if he has a sprinkler system in place and if he'll be able to get rid of a station?
Ben said that there are two stations that overlap. One is leaking and that station could be eliminated if the fence is moved within the set back. With the fence moved, the other station would be a big help covering that area.

Carl Johnson asked if he would just go to the corner of his neighbors fence?
Ben confirmed that was the case.

Garry said that he drove past that property, and confirmed the Perkins property is the only fence that is moved back.

Anthony Lamb asked about another property that the BOA had declined a variance for a similar issue in the past. Danny Christoffers confirmed that in December of 2022, a variance was denied for 200 Frontier Street. Anthony described that it was denied in an attempt to adhere to the Zoning Code as opposed to continuing to adopt variances.

Garry asked for confirmation of notification of residents.
Danny Christoffers said that it was published in the paper, posted in the standard locations, and mailed to property owners within the approximately 200 feet radius. He did not receive comments or questions from the public.

Aaron Johnson explained that he was contacted about this fence, but he does not have authority to permit it where it was requested. Aaron advised that the proposed location of the fence does not violate the corner sight triangle, but it would not adhere to the setback requirement for a 6 foot privacy fence. Aaron also advised there was a variance requested in 2022 for 200 Frontier Street, seeking to move a fence to put it in line with other fences in the neighborhood. In that situation the party seeking the variance moved their fence a little bit but couldn't go all the way out. Aaron stated that he does not have an opinion on the requested variance.

Garry asked if they are set-in about a foot from the sidewalk?
Aaron said that would be on the property line. He described another house with a black railing fence that is not a privacy fence which can go out to the fence line on a corner lot. The ordinance only applies to privacy fences on a corner lot.

Garry asked for Danny to pull up the discussion for the 200 Frontier St. variance request.
Danny showed the minutes for that meeting in 2022, and the Board members reviewed the discussion.

Brent Jensen expressed concern that people who aren't asking for a variance have placed a fence with the required setback, and are getting away with it, while people who are asking for permission are being punished.

Jenni asked about a fence south of 200 Frontier St. and when that went in?
Anthony said that James Colvert, the previous Building Inspector, stated that was a mistake. Anthony noted there is an ongoing debate how to handle a neighborhood where people don't follow the rules. Do you fix that when they come in for a variance or let everyone place fences where they want without requiring everyone to adhere to the same rules. He would like the BOA to be consistent and enforce the requirements as written. He noted that letting property owners make their own rules diminishes the value of the BOA.

Brent Jensen said that from an aesthetic perspective, we look undecided (in regard to fences) as it sits right now.

Garry asked the Dulseys how long they lived there.
Ben reported he had been at that property for 6 years.

Anthony asked if a 4-foot privacy fence would do what they needed?
Ben responded that it would not.

Dulsey Perkins asked if they would be able to extend up to a foot or two of the sidewalk?
Aaron said that the rule is for it to remain where it is now. Your property line begins 1 foot from where the sidewalk is, the fence should be 15 feet from there.

There was further discussion regarding the desire for consistency, the need to adhere to current zoning codes, and concerns about what to do about people who don't request a variance but install a fence without the City's knowledge. Discussion continued regarding whether the similar issue with a previously rejected variance request is comparable to this request.

Sarah Kleber reviewed the variance requirements of chapter 165E of the zoning code.

A motion was made by Lamb seconded by Jensen to close the public hearing at 5:53 pm.
All votes were ayes, and the motion carried.

<u>Board Discussion & Decision</u>
Garry stated that we need to stay true to our codes and be fair in our judgements.

Anthony expressed that the Board is not bound to the prior decision but the discussion that occurred (regarding 200 Frontier St) was still valid. He noted the Board has flexibility within the factors to be considered to say that a particular lot is different. In his mind, this is a reproduction of the same issues from the decision made two years ago.

Brent understands that at some point we need to make a stand on the code, but he prefers uniformity in the neighborhood.

Carl noted that since he's been on the Board, fences have been a reoccurring variance request. It's his thought that if it doesn't appear to impact vehicle traffic, sight lines, or pedestrian walk ways, he has no problem with it. He explained that over the years a variety of interpretations of the Code have been used depending on the conditions. For this situation, the applicants have a swimming pool, and a privacy fence is needed. If there is a 4-foot fence, kids will jump over and into the pool. He reiterated that safety is his concern.

Jenni described how she is trying to determine if this is a unique circumstance.

Garry asked for clarification about issues with the Board making one decision in 2022, but possibly doing something different in 2024.

Sarah Kleber explained that the Board of Adjustment is not necessarily bound by a prior decision of the board. Each circumstance that comes before the Board should be decided upon the situation and property that is involved. There is merit in begin consistent, but the Zoning Code does not bind the Board to make the decision made in 2022. A different situation or factors might lead to a different outcome, or different Board members with a different perspective may may a different decision. Prior decisions are not binding precedent on the board. The Zoning Code is there to guide the Board in the findings needed to make the Board's decisions. The overall intent of the Zoning Code is to provide requirements for property owners, but for special and/or unique circumstances or situations that are not anticipated by the Zoning Code, a variance from the requirements may be appropriate. The standards for granting a variance are in the Zoning Code and are not easy to meet.

A motion was made by Johnson, seconded by Jensen to approve the variance application request submitted by Ben & Dulsey Perkins for a variance from the required fifteen-foot setback of the street side yard required by Zoning Code 165D.04(F)(3). The variance will permit the applicants at 200 Prairie Lane to install a 6-foot fence on their corner lot in the backyard area within the required fifteen-foot setback in order for their fence to connect with boundary of their abutting backyard neighbors' fence also built within the set back.

Roll Call Vote: Johnson – yes; Lamb- no; Jensen- yes; McCrory- yes; Clark- no.
Motion Carried (3-2)

Sarah Kleber recommended that the Board include written findings of fact in the Resolution for the variance confirming that the conditions in 165E.03 have been met.

A motion was made by Lamb, seconded by Johnson to direct Danny Christoffers to work with Sarah Kleber to prepare the findings of fact based on the discussion for the variance for 200 Prairie Lane.
All votes were ayes, and the motion carried.

Adjournment
A motion was made by Johnson, seconded by McCrory to adjourn at 6:11pm.
All votes were ayes, and the motion carried.

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Danny Christoffers, Secretary Garry Clark, Chairman